

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10309 of 2023

M/s A.K. Construction, a Partnership firm, having its registered Office at Village-Deopur, P.O.-K. Fariyatta, Police Station-Khaira, District-Jamui through one of the Partners Namely Amrendra Kumar (Male), aged about 44 Years, Son of Sri Muneshwar Yadav, resident of Village-Deopur, P.O.-K. Fariyatta, Police Station-Khaira, District-Jamui.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Health, Government of Bihar, New Secretariat, Patna.
2. The Director in Chief, Department of Health, Government of Bihar, New Secretariat, Patna.
3. The Bihar Medical Services and Infrastructure Corporation Ltd. through its Managing Director, 5th Floor, Biscomaun Bhawan, Gandhi Maidan, Patna-1.
4. The Managing Director, Bihar Medical Service and Infrastructure Corporation Ltd., 5th Floor, Biscomaun Bhawan, Gandhi Maidan, Patna-1.
5. The General Manager (F and A), Bihar Medical Service and Infrastructure Corporation Ltd., 5th Floor, Biscomaun Bhawan, Gandhi Maidan, Patna-1.
6. The Time Extension Committee through its President Being Chief General Manager, (Pariyojana), Bihar Medical Services and Infrastructure Corporation Ltd, Patna.
7. The Members of the Time Extension Committee, Bihar Medical Service and Infrastructure Corporation Ltd., Patna.
8. The Deputy General Manager, Bihar Medical Service and Infrastructure Corporation Ltd., Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar, Adv. Mr. Pravashankar Mishra, Adv.
For the Respondent/s	:	Mr. Mujtabaul Haque (GP 12) with Mr. Manish Kumar, AC to GP-12.
For the BMSICL	:	Mr. Lalit Kishore, Sr. Adv. with Mr. Vikash Kumar, Adv. Mr. Ayush Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

5 29-04-2024 Heard learned counsel for the parties.

2. The present Writ Petition has been filed for the



following reliefs:-

“That by this writ petition, the petitioner seeks indulgence of this Hon’ble Court for issuance of writ in the nature of mandamus or any other appropriate writ/s, order/orders, direction/s as Hon’ble Court may deem fit for the following reliefs:

(i) To issue a writ in the nature of Certiorari for quashing the part of the decision dated 29.10.2020 having been taken in the meeting convened by Time Extension Committee by which direction of penalty on account of delay has been imposed with effect from 07.06.2017 upon the petitioner while granting extension of time to the petitioner and to declare that order dated 29.10.2020, passed by the concerned committee to the extent of imposition of late fine is not permissible in the eye of Law.

(ii) To issue a writ in the nature of Mandamus commanding the respondents to pay and refund the petitioner a sum of Rs. 29,57,216/- (Rs. Twenty nine lac fifty seven thousand two hundred sixteen) with interest which is payable to the petitioner pursuant to the work done by him in the light of the agreement executed between the petitioner and the respondent authority as the same has been deducted illegally from the 3rd and 4th RA Bill in the name of late fine for delayed execution of work awarded to him.”

3. The admitted facts in the present case are that the petitioner pursuant to a tender dated on 10.03.2016, was



awarded the contract for constructing a thirty bedded CHC building at Islamnagar Aliganj, Jamui on 29.04.2016. The period of completion of the contract as per the initial work order is 07.06.2017 but in the present case, the petitioner could complete the construction only by 30.11.2019. The petitioner in the interregnum has applied for extension of the time and the authorities constituted a five men Committee and by order dated 29.10.2020 took a decision to impose penalty on the petitioner while extending the period of completion of the work by 30.11.2019. The said order dated 29.10.2020 (Annexure-16) is under challenge in the present CWJC. Learned counsel has stated that the petitioner is aggrieved by order dated 29.10.2020 to the extent that it levies penalty while granting the extension of time. Learned counsel has relied on the Judgments in the case of *Gas Authority of India Ltd. Vs. Indian Petrochemicals Corporation Ltd. & Ors.* reported in 2023 (3) SCC 629 and *Mitra Guha Builders (India) Natural Gas Corporation Ltd.* reported in 2020 (3) SCC 222 to buttress his contentions. Learned counsel has stated that without putting the petitioner on prior notice or calling for an explanation, the authorities have imposed penalty which has serious civil consequences and the same is opposed to the principles of natural justice and equity.



Learned counsel has, therefore, prayed this Court to set aside the impugned order dated 29.10.2020 to the extent of levying penalty on the petitioner.

4. Per contra, the learned counsel for the respondents has vehemently opposed the very maintainability of the present writ petition and stated that as per the terms and conditions of the tender, the petitioner has an alternative and efficacious remedy of approaching an arbitrator. Learned counsel has stated that once an arbitration clause is there between the parties, the petitioner has to approach the arbitrator if there is any dispute with regard to the terms and conditions of the contract. That as per Clause 2 of the said contract, the authorities are well within their rights to impose liquidated damages and if the petitioner is aggrieved, he has the remedy to approach the arbitrator under Clause 25. Further, learned counsel has stated that the order granting extension of time cannot be segregated from the one levying penalty. That the order is passed by the authority duly taking into consideration the entire gamut of circumstances and while granting the extension, the authorities in their wisdom have decided to levy penalty on the petitioner and the same cannot be interfered by this Court under Article 226 of the Constitution of India. Learned counsel has stated that once the



committee constituted by the authorities have take a decision to levy the penalty. This Court cannot substitute its wisdom and therefore prayed this Court to dismiss the present writ petition and relegate the petitioner to the arbitrator, if he has any grievance. Learned counsel has relied on the Judgment in the case of ***J.G. Engineers Private Ltd. Vs. Union of India & Anr.*** reported in 2011 (5) SCC 758 to buttress his contentions.

5. A perusal of the impugned order dated 29.10.2020 (Annexure-16) passed by the authorities reveals that before passing the said order, the petitioner was not issued any notice calling for his explanation or giving him an opportunity of hearing.

6. Admittedly, in the order passed by the authorities while granting extension of time they have decided to levy a liquidated damages to the tune of Rs. 29,57,216/- on the petitioner. The passing of the said order without putting the petitioner on prior notice is violative of the principles of natural justice and equity. This Court as well as the Hon'ble Supreme Court in a catena of Judgements has time and again held that whenever the authorities decide to levy or take any action which will have serious civil consequences, they are obligated to issue prior notice intimating the person as to the profound action



sought to be taken and calling for an explanation, in this particular case the same is missing. Though the learned counsel for the petitioner as well as the respondents have relied on the above cited Judgments to buttress their respective contentions, this court is not inclined to go into the same as this Court is inclined to set aside the impugned order, on the short question that the same is violative of the principles of natural justice and equity. This Court is of the opinion that the ends of justice would be served if the order dated 29.10.2020 is set aside and the matter remanded back to the authorities for considering the same afresh duly putting the petitioner on notice and calling for his explanation by giving him reasonable time.

7. On receipt of the said explanation, the authorities shall duly consider the explanation and pass a reasoned order. The entire exercise shall be completed as expeditiously as possible preferably within a period of eight weeks from the date of receipt of the copy of this order. Any order passed shall be communicated to the party.

8. It is made clear that this Court has not decided the matter on merits and has left all the issues to be dealt with by the authorities.

9. With the above directions, the present Writ Petition



stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

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